IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 638 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

SULEMAN UMAR KUMBHAR

Versus

COMMANDANT S.R.P. GROUP NO.12

Appearance:

1. Special Civil Application No. 638 of 1999

MR AS SUPEHIA for Petitioner No. 1

MR PREMAL JOSHI AGP for Respondent No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/04/2002

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner, an armed police constable appointed on probation on 9.1.1997 in the State Reserve

Police Force, has approached this Court with a prayer to set aside the order dated 8.1.1999 discharging him from service on account of admitted acts of serious misconduct impinging upon national interest and security and acts amounting to heinous offence of treachery.

2. The brief facts of the case are that the petitioner was appointed on probation and, in any case, the probation period was to expire on 9.1.2000. On his own admissions in the statement dated 20.12.1998 voluntarily made during the course of an enquiry, he had, during his posting and duty at Gujarat Bhawan, New Delhi in 1998, contacted the Embassy of Pakistan and its employee, namely, Kabil, in connection with issuance of Visa of three ladies who accompanied his father-in-law. Kabil helped him in getting the Visa for the three women and entrusted him with the work of collecting information about the training going on in Rapar area of Kutch which happened to be near the native place of the petitioner and which also happens to be near the Indo-Pak Border. Admittedly, he was paid Rs.1000/- towards expenses and asked to furnish the tickets in proof of having travelled to Rapar. He duly travelled to Rapar and admittedly also furnished the tickets to Kabil. Upon enquiry being made, he left the place of his posting in New Delhi and reported at the Headquarter at Gandhinagar as a deserter. Knowing fully well that what he committed was a serious offence, he did not inform any officer about it on the ground that he did not know that it would be blown to such proportion.

2.1 On the basis of the above broad facts and after giving an opportunity of being heard, the petitioner was discharged from service subject to the provisions of Section 25 of the Bombay Police Act, 1951 with immediate effect on 8.1.1999. The petition was argued on the slander basis of the discharge being punitive and a full-fledged departmental enquiry required under the Rules having not been conducted. The petition states technical pleas of the termination not being dismissal and contrary plea of the petitioner having no alternative remedy since the order was not passed by way of penalty and it is also contended that the impugned order also did not state that the petitioner could file an appeal. The learned counsel for the petitioner relied upon the ratio of the judgments of the Apex Court in V.P.AHUJA v. STATE OF PUNJAB [(2000) 3 SCC 239] and H.F.SANGATI v. REGISTRAR GENERAL, HIGH COURT OF KARNATAKA [(2001) 3 SCC 117] to submit that the impugned order was stigmatic and holding of formal proceedings of enquiry was necessary.

3. By an affidavit-in-reply, Assistant Commandant of the S.R.P. Group 12, has stated that, after issuance of a show cause notice, a detailed reply dated 28.12.1998 was given by the petitioner and his request for personal hearing was also granted. Even thereafter, an amended order dated 18.1.1999 was issued and served upon the petitioner whereby he was also permitted to prefer an appeal against the impugned order within 60 days. This petition was filed within the period of those 60 days and the petitioner has suppressed the material fact of the order dated 18.1.1999 and, by way of suggestio falsi, stated on oath that the impugned order did not state that the petitioner could file an appeal.

4. In the above extraordinary set of facts, the petition deserves to be dismissed without entering into the merits of the technical pleas of the petitioner and only on the grounds of the petitioner not having made out a case of serious legal injury, misrepresentation of facts and having alternative, efficacious and appropriate remedy which was also made expressly clear to him by an order of the Commandant. It is also required to be clearly recorded that in view of the peculiar facts, the learned counsel on either side did not seriously pursue any point and left it to the Court to make appropriate order.

5. In the facts of this case, not only that an alternative remedy of filing an appeal was expressly suggested to the petitioner by a written communication but special revisional powers are conferred upon the State Government under Section 27-A of the Bombay Police Act, 1951 to suo moto, or upon an application, examine the legality or propriety of any decision or order and confirm, modify or reverse any such decision or order within an elongated period of three years. Therefore, a direct petition under Article 226 of the Constitution was liable not to be entertained according to the legal position recently settled in a Division Bench judgment of this Court in INDIAN INSTITUTE OF MANAGEMENT v. UKAKANT SHRIVASTAVA [2002 (1) GLH 330]. Upon the argument that once the party had approached the High Court and the High Court had entertained the petition the petitioner could not be relegated to the appropriate forum, a view is expressed in the said decision that when it is pointed out that alternative remedy was available under the law, it was the duty of the Court not to exercise its writ jurisdiction except in rarest of the rare cases. On the other hand, the probation period of the petitioner in any case expired on 9.1.2000 and, with the above record of facts, it is beyond imagination that he could have been

confirmed in service. Therefore, it is obvious that direct approach by the petitioner to this Court on the basis of technical pleas and suppressio veri and suggestio falsi was an attempt at short-circuiting the due procedure prescribed under the law which makes the petition unfit for consideration under the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution.

6. In the facts and for the reasons discussed hereinabove, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)